

Permit: Individual Permit 200220819

### **PROPOSED ADMINISTRATIVE PENALTY ORDER**

Under the authority granted by 33 U.S.C. § 1319(g) and 33 CFR Part 326.6, I, Colonel Charles R. Alexander, District Engineer, Wilmington District, propose to issue this order assessing a Class 1 Administrative Penalty for violation of the above-referenced permit.

**Name/Address of Permittee:**

N.C. Department of Transportation  
Gregory J. Thorpe, Ph.D.  
Environmental Management Director, PDEA  
1548 Mail Service Center  
Raleigh, NC 27699-1548

**Permitted Activity:**

The placement of fill in jurisdictional waters incidental to the construction of the Knightdale Bypass, project R2547, in Wake County, North Carolina.

**Condition(s) or Limitation(s) of Permit Reportedly Violated:**

On October 15, 2003, the North Carolina Department of Transportation (NCDOT) informed the Corps that it had violated its Clean Water Act permit and water quality certification by doing unauthorized mechanized clearing and fill of piedmont bottomland and alluvial forest wetlands for construction access causeways at both Poplar Creek and Marks Creek. The following sections of Permit No. 200220819 were violated by the clearing and unauthorized fill:

A. Special Condition a., which reads: "all work authorized by this permit must be prepared in strict compliance with the attached plans, which are a part of this permit."

NCDOT did work in jurisdictional wetlands outside of the limits shown on the plans (permit drawings) attached to the permit.

B. Special Condition hh., which reads: "prior to commencing construction within jurisdictional waters of the United States, the permittee shall forward the latest version of project construction drawings to the Corps of Engineers, Raleigh Regulatory Field Office NCDOT Regulatory Project Manager. Half-size drawings are acceptable."

NCDOT did not provide the latest project construction drawings to the Corps.

C. Special Condition jj., which reads: "The permittee and its contractors and/or agents shall not excavate, fill, or perform mechanized landclearing at any time in the construction or maintenance of this project within waters and/or wetlands, except as authorized by this permit, or any modification to this permit. There shall be no excavation from, or waste disposal into, jurisdictional wetlands or waters associated with this permit without appropriate modification of this permit, including appropriate compensatory mitigation. This prohibition applies to all borrow and fill activities connected with this project."

NCDOT filled and performed mechanized landclearing within wetlands in areas not covered by the subject permit, and did not apply for a modification to the permit before doing the work.

D. Special Condition ll., which reads: "the permittee shall comply with the conditions specified in the water quality certification, No. 3377, issued by the North Carolina Division of Water Quality on April 10, 2002."

NCDOT did not comply with Conditions 5 and 13 of the water quality certification. Additionally, it exceeded the limits of authorized impacts under the certification.

E. Special Condition rr., which reads: "no excavated or fill material will be placed at any time in waters or wetlands outside the permitted construction areas, nor will it be placed in any location or in any manner so as to impair surface water flow into or out of any wetland area."

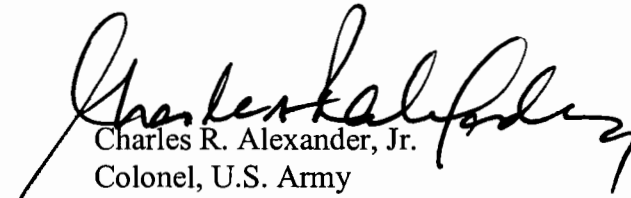
NCDOT did work in jurisdictional wetlands outside of the limits of the permitted construction areas.

**Description of the Nature of the Violation(s):**

NCDOT, through its contractor, performed unauthorized mechanized clearing and fill of piedmont bottomland and alluvial forest wetlands for construction access causeways at both Poplar Creek and Marks Creek, impacting a total of 0.68 acre of wetlands at Marks Creek, and 0.03 acre at Poplar Creek, for a total of 0.71 acre of wetlands. Plans submitted to the Corps for this project did not include the construction of these causeways through jurisdictional waters.

I propose to assess a Class 1 Administrative Penalty against the permittee in this case for \$7,250; however, this proposal is subject to revision in the interest of justice after all evidence and comments have been received and reviewed. The amount that may be assessed as a Class 1 Administrative Penalty may not exceed \$11,000 per individual violation or a maximum amount of \$27,500.

Issued this 15<sup>th</sup> day of May 2005.

  
Charles R. Alexander, Jr.  
Colonel, U.S. Army  
District Engineer